IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

WP(C).No. 1020 of 2007(U)

AGAINST THE ORDER IN CMA.31/2006 IN
CMA.30/2006 of D.C & SESSIONS COURT,TRIVANDRUM
OS.1496/2005 of III ADDL.M.C.,TRIVANDRUM
(IA.571/2006,10333/2005)

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PETITIONERS:

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1. GEORGE JOSEPH,
PEROOR HOUSE, THUMPAMAN P.O.,
ADOOR.

2. GEORGE VARGHESE,
PEROOR HOUSE, THUMPAMAN P.O.,
ADOOR,
RESPRESENTED BY 1ST AND 2ND PETITIONERS
POWER OF ATTORNEY HOLDER MR. REJI THOMAS MATHEW,
MULAMOOTTIL AVENUE, DREAM INDIA VILAS,
PATHIRAPALLY,
KUDAPPANAKUNNU, THIRUVANANTHAPURAM.

BY ADV. SRI.P.GOPALAKRISHNAN NAIR
SRI.A.ABDUL KHARIM

RESPONDENTS:

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1. REJI KUMAR,
VILAYIL VEEDU, PATHIRAALLY,
KUDAPPANAKUNNU, THIRUVANANTAPURAM.
2. RADHIKA,
VILAYIL VEEDU, PATHIRAPALLY,
KUDAPPANAKUNNU, THIRUVANANTHAPURAM.
3. PADMINI,
VILAYIL VEEDU, PATHIRAPALLY,
KUDAPPANAKUNNU, THIRUVANANTHAPURAM.
4. AJI,
VILAYAIL VEEDU, PATHIRAPALLY,
KUDAPPANAKUNNU, THIRUVANANTHAPURAM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.1020 OF 2007

DATED THIS THE 10th DAY OF JANUARY, 2007

JUDGMENT

Petitioners are plaintiffs in O.S.1496/05 on the file of third Addl. Munsiff Court, Thiruvananthapuram. Petitioners filed I.A.10333/05, an application under Order XXXIX Rule 1 of Code of Civil Procedure seeking an order of temporary injunction against respondents, contending that respondent have no manner of right or possession to plaint schedule property. Respondents contested the application. Defendants filed I.A.571/06, an application for temporary injunction contending that they have a right use the pathway passing through the plaint schedule property and plaintiffs are causing obstruction to the way by putting up hollow bricks. Petitioners sought an order directing the removal of the hollow bricks also. Plaintiffs filed objections. Both petitions were heard altogether. On the side of plaintiff Exts.A1 to A4 were marked and on the side of defendants Exts.B1 to B4 were marked.

2. Learned Munsiff under Ext.P5 order dismissed I.A.10333/05 filed by plaintiffs and vacated the original exparte order of temporary injunction. I.A.571/06 filed by defendants was allowed

and plaintiffs were restrained from causing any obstruction to the use of plaint schedule pathway till disposal of the suit. They were also directed to remove the hollow bricks stocked in front of the gate situated in the defendants' property. Petitioners challenged the order in C.M.A.30/06 and 31/06 before District Court, Thiruvananthapuram. Under Ext.P6 order, learned District Judge confirmed the order and dismissed the appeals. That order is challenged in this petition filed under Article 227 of Constitution of India.

3. Learned Counsel appearing for petitioners was heard.

4. Arguments of learned Counsel appearing for petitioners was that learned Munsiff and learned District Judge wrongly relied on Ext.B2, which is inadmissible in evidence, as it is not a registered document. It was also argued that though Ext.B2 was allegedly executed on the same day of execution of Ext.B1 neither Ext.B1 nor Ext.B2 reveal the existence of Ext.B2 and therefore the contention of petitioners that Ext.B2 is not genuine should have been prima facie accepted by the Courts below and in such circumstances, Ext.P6 order is to be quashed.

5. The question is whether in exercise of the extraordinary jurisdiction of this Court under Article 227 of Constitution of India, the discretion exercised by the trial Court, which was confirmed by

learned District Judge, is to be interfered. Learned Munsiff and learned Sub Judge found that the pathway was in existence and the gate was put up only recently. It was also found that under Ext.P2, defendants have a right to use the pathway.

6. Arguments of learned Counsel appearing for petitioners was that Ext.P2 should not have been relied on as it is not a genuine document and is inadmissible in evidence.

7. Learned District Judge found that the question whether Ext.P2 is genuine or not is to be decided after trial on the evidence and respondents have a prima facie case. Learned Counsel appearing for petitioner vehemently argued that as existence of Ext.B2 was not mentioned in Ext.B1, it is to be taken that Ext.B2 was forged and not a genuine document. That is a matter to be decided by the trial Court on the evidence and on assumptions the discretion exercised by the Courts below cannot be interfered with so long as the view of the Courts below are possible views that could be taken on the evidence. Though it was argued that Ext.B2 should not have been relied as it is an unregistered document that aspect is also to be considered by the trial Court at the time of evidence.

I do not find any reason to interfere with the impugned orders passed by the Courts below. Learned Munsiff is directed to dispose

the suit as expeditiously as possible untrammeled by the observations in Exts.P5 or P6 orders or in this judgment.

Petition dismissed.

M.SASIDHARAN NAMBIAR,JUDGE

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